

inclined to think, that some proof, other than the oath of the claimant, should be offered of its due execution.

That claims No. 52, 108, 109, 110, 111, 112, 113, 115, and 119, were proved. That claim No. 86 was formally proved, except that the amount of the account in bar which was admitted to exist by the affidavit, was not yet stated. That claim No. 87 was the claim of one of the complainants which the auditor thought should be considered as fully proved. That claim No. 101 was formally proved; but from the copy of the list of debts due to the deceased, before alluded to, it appeared, that there was an account in bar which should be credited.

Proof had been filed of the insolvency of *B. D. & R. Mullikin*, as was required to sustain claims No. 67, 69 and 70; but the original acceptances had not yet been produced. Additional proofs had been offered in support of claim No. 127. And it now appeared, that sundry assignments had been made by *Tongue & McPherson*, on account thereof, which should be credited. The auditor had not re-stated the claim, because he was not satisfied that it ought to be allowed against the estate of the deceased partner. Additional proof had also been offered to sustain claims No. 114, 115, and 117, from which he had re-stated the same as No. 156, 157, and 158; No. 157 and 158 were proved, but No. 156 was not proved.

*William Fowle & Co.* as claimants No. 127, on the 2d of May, 1831, filed their exceptions to the auditor's reports. 1. Because the evidence as exhibited and filed establishes, in behalf of these complainants' claim, an original liability of *Thomas Tongue*, as partner of *Thomas T. McPherson*. 2. Because it establishes a distinct original liability of *Thomas Tongue* to these exceptants, independent of the partnership of *Tongue & McPherson*. And 3. Because it establishes a collateral liability of *Thomas Tongue* to these exceptants, which operates as beneficially in favour of these exceptants as an original undertaking.

On the 28th of May, 1831, *Joseph Allen* filed an exception to the auditor's report, because he had rejected his, *Allen's* claim No. 4. And on the same day *Mary A. Allen*, *John Collinson*, *Gideon G. Tongue*, *Rezin Estep*, *Harriet Waters*, and *Elizabeth Allen*, excepted to the auditor's report, because he had not allowed their claims No. 5, 22, 29, 35, 153, and 154.

6th June, 1831.—BLAND, Chancellor.—This case standing ready for hearing on the several reports of the auditor, and the